PATENT
Attorney Docket No.: 02558B-069000US
Client Ref. No.: BRP00293

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Peilin Chen et al.

Application No.: 10/650,595

Filed: August 27, 2003

For: MULTICONSTITUENT LIQUID IGG AND IGM CALIBRATORS

Customer No.: 20350

Confirmation No. 7928

Examiner: CHEN, Stacy Brown

Technology Center/Art Unit: 1648

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office communication mailed October 19, 2004, Applicants elect Group I, claims 1-12, drawn to a composition comprising serum in which is dissolved a plurality of heterologous antibodies directed to different antigens. This election is made with traverse.

Basis for restriction practice is illustrated in 35 U.S.C. §121, "[i]f two or more independent and distinct inventions are claimed in one application, the Director [of the Patent and Trademark Office] may require the application to be restricted to one of the inventions." The meaning of "independent" and "distinct" is further provided by MPEP §802.01: the term "independent" means that there is no disclosed relationship between the two or more subjects disclosed; the term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part thereof, process, and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed.

The present application relates to the construction of a novel multiconstitutent liquid IgG and IgM calibrator, which contains a number of heterologous antibodies. This calibrator allows the simultaneous detection of multiple antigens in a biological sample. Thus, the subject matter of the restriction requirement, namely Groups I and II, are closely related as the claimed method for detecting the presence of multiple antigens (Group II) requires the use of the claimed calibrator of Group I. Thus, the subjects upon which the restriction requirement is imposed are not "independent" under 35 U.S.C. §121 according to the MPEP's definition.

Nor are the subjects "distinct" under 35 U.S.C. §121 according to the MPEP's definition. Because the claimed antigen-detection method of Group II relies on the multiconstitutent calibrator of Group I, they cannot be separated from each other when the claimed method is practiced.

Because of the common inventive concept and the close relation between the subject matter of Groups I and II, the examination of these two Groups together would not impose any additional, unreasonable burden on the Examiner. Applicants respectfully submit that the restriction requirement is improper and request that the Examiner reconsider and withdraw the requirement.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

Chuan Gao
Reg. No. 54,111

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
CG:cg
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